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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 541

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Announcement of Time-Limited Non-Enforcement Policy for Providers of Medicaid-funded Services for Individuals with Intellectual or Developmental Disabilities in Residential Homes and Facilities with 15 or Fewer Beds

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Announcement of policy.

**SUMMARY:** The Department of Labor's (Department or DOL) Final Rule revising the regulations for implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees, published in the Rules section of today's Federal Register, will become effective December 1, 2016. This document announces a time-limited non-enforcement policy for providers of Medicaid-funded services for individuals with intellectual or developmental disabilities in residential homes and facilities with 15 or fewer beds. From December 1, 2016 to March 17, 2019, the Department will not enforce the updated salary threshold of \$913 per week for the subset of employers covered by this non-enforcement policy. Throughout the duration of this non-enforcement policy, the Department will engage in outreach and technical assistance efforts, including to providers of services in settings covered by this policy. This non-enforcement policy does not apply to providers of Medicaid-funded

services for individuals with intellectual or developmental disabilities in residential care facilities with 16 or more beds.

**DATES:** [Insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Regulations, Legislation and Interpretation, U.S. Department of Labor, Wage and Hour Division, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone: (202) 693-0406 (this is not a toll-free number). Copies of this document may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693-0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1-877-889-5627 to obtain information or request materials in alternative formats.

**SUPPLEMENTARY INFORMATION:**

**I. Non-Enforcement Policy**

Today, the Department's Wage and Hour Division issued Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Final Rule ("Overtime Final Rule" or "Final Rule"). This Final Rule revised the regulations under the FLSA implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. These exemptions are frequently referred to as the "white collar" exemptions and are contained in 29 CFR Part 541. To be considered exempt under Part 541, employees must meet certain minimum requirements related to their primary job duties and, in most instances, must be paid on a salary basis at not less than the minimum amounts specified in the regulations. Among other changes, the Final Rule updated the salary level above which certain white collar workers may be exempt from overtime pay

requirements from the previous level of \$455 per week (the equivalent of \$23,660 per year) to a new level of \$913 per week (the equivalent of \$47,476 per year). The Department set an effective date of December 1, 2016 for the Final Rule, explaining that this will provide employers sufficient time—more than 180 days—to make any changes that are necessary to comply with the final regulations.

The Department and the U.S. Department of Health and Human Services (“HHS”) have engaged in appropriate interagency discussions regarding the interaction between the Overtime Final Rule and HHS’ policy and regulatory priorities. During these communications HHS expressed particular concerns about the Final Rule’s impact on residential homes and facilities for individuals with intellectual or developmental disabilities with 15 or fewer beds. HHS also voiced concern that the December 1, 2016 effective date could affect the federal government’s efforts to encourage the use of such community-based providers, and stated that providing this subset of Medicaid-funded providers additional time to implement these requirements could help mitigate potential budgeting and implementation concerns for these providers.

HHS conveyed that the Final Rule coincides with implementation of certain provisions of its rule affecting states’ provision of Medicaid home and community-based services (“HCBS”). See 79 FR 2948 (Jan. 16, 2014). Among its provisions, this HHS rule requires that all settings for HCBS be integrated in and support the beneficiary’s full access to the greater community and requires States and the provider infrastructure on which these services rely to implement necessary enhancements to their Medicaid home and community based systems to comply with these new requirements. States have until March 17, 2019 to implement approved transition plans under which providers must be in

full compliance with the rule, and HHS expressed concern that the timing of the Overtime Final Rule could undermine compliance efforts of HCBS providers.

The Department is committed to working with HHS to ensure that implementation of the Overtime Final Rule does not compromise its agency priorities or regulations. Based on these discussions with HHS, the Department has determined that DOL enforcement of the new salary threshold in the Overtime Final Rule in the period immediately following the December 1, 2016 effective date could have an impact on the use of these types of community-based facilities. Providing this subset of providers of Medicaid-funded services additional time to transition and seek technical assistance from the Department without being subject to DOL enforcement of the new salary threshold may mitigate some potential budgeting and implementation concerns.

Providers in this subset of Medicaid-funded residential homes and facilities face a unique combination of challenges in balancing the goal of shifting care of individuals with intellectual or developmental disabilities to small community-based settings and meeting the timeline for implementing the HHS rule impacting HCBS providers, with the fact that these facilities are small, dependent on Medicaid funding in state budgets, and serve vulnerable populations. The non-enforcement policy will allow the Department to devote its time and resources to providing assistance to these providers of services at small community-based facilities, and will allow these employers time, if needed, to work with their state legislatures and HHS on implementation of the Overtime Final Rule.

Accordingly, after carefully considering appropriate interagency discussions with HHS, the Department has decided to enact a time-limited non-enforcement policy for

providers of Medicaid-funded services for individuals with intellectual or developmental disabilities in residential homes and facilities with 15 or fewer beds. This non-enforcement period will last from December 1, 2016 (the effective date of the Overtime Final Rule) until March 17, 2019. During this period of non-enforcement, the Department will not enforce the updated salary threshold of \$913 per week for the subset of employers covered by this non-enforcement policy. However, the Department will continue to enforce all other provisions of the Overtime Final Rule as to this subset of employers, including in instances involving employees who meet the salary basis and duties tests but who earn less than the previous salary threshold of \$455 per week. The non-enforcement policy does not apply to providers of Medicaid-funded services for individuals with intellectual or developmental disabilities in residential care facilities with 16 or more beds.

### **Regulatory Requirements**

This document is non-binding guidance articulating considerations relevant to the Department's exercise of its enforcement authority under the FLSA. It is therefore exempt from the notice-and-comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b).

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

The Department has determined that this guidance does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Authority: 29 U.S.C. 216(c); Secretary's Order No. 01-2014.

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Wage and Hour Division.

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